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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,721	02/11/2004	Thomas A. Osborne	8627-451	2837
7590	11/28/2007		EXAMINER	
Lawrence G. Almeda			THALER, MICHAEL H	
BRINKS HOFER GILSON & LIONE			ART UNIT	PAPER NUMBER
P.O. Box 10395			3731	
Chicago, IL 60610				
			MAIL DATE	DELIVERY MODE
			11/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/776,721	OSBORNE, THOMAS A.
	<b>Examiner</b>	<b>Art Unit</b>
	Michael Thaler	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 September 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 39 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,4-38 and 40-56 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application  
6) Other: \_\_\_\_\_

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Claims 3 and 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on May 21, 2007.

Claims 1, 2, 4, 6-8, 10, 12, 14, 17-22, 24-26, 28, 30, 32, 35-38, 40, 42-44, 46, 48, 50 and 53-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ravenscroft et al. (6,258,026). Ravenscroft et al. disclose primary struts 26, each primary strut comprising a member 26 (which is curved where it is bent as it projects outside of hub 12 and at shoulder 30) terminating at anchoring hook 28, secondary struts 18 connected to the primary struts 26 (where they are welded together within hub 12 as indicated in col. 4, lines 34-38) and extending therefrom. Alternatively, it would have been obvious that each primary strut 26 is curved where it is bent. As to claims 2 and 21, the claimed primary struts are considered to be only the struts 26 that terminate in a hook 28 (noting claim 1, line 3-6). When there are only 3 struts 26 that terminate in a hook 28 (as indicated in col. 5, lines 19-21) there is a greater number of secondary struts than primary struts. Further, as to line 4 of claim 2, there are two secondary struts 18 on opposite sides of

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a primary strut 26 due to the alternating arrangement (in the circumferential direction) of the primary struts 26 and secondary struts 18 described in col. 5, lines 26-32. As to claim 56, each secondary strut is connected to a primary strut at a point about halfway between the central axis and an outer perimeter of the filter when the struts of the filter are straightened when compressed within a tube as indicated in col. 4, lines 45-46 since the outer perimeter of the filter is near the central axis when the filter is in this configuration.

Claims 11, 13, 15, 16, 29, 31, 33, 34, 47, 49, 51 and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft et al. (6,258,026). Ravenscroft et al. fail to disclose the specific dimensions. However, it is old and well known to dimension blood filters as claimed in order to obtain the advantage of enabling them to fit inside small blood vessels. It would have been obvious to so dimension the Ravenscroft et al. filter so that it too would have this advantage. The above well known in the art statement is taken to be admitted prior art because applicant failed to traverse the examiner's assertion (M.P.E.P. 2144.03).

Claims 1, 2, 4-38 and 40-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravenscroft et al. (6,258,026) in view of Walak et al. (6,540,767). Assuming arguendo that the

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Ravenscroft et al. primary struts 26 are not considered to be curved, Walak et al., in figure 15 teach that the struts of a filter should be gently curved apparently in order to obtain the advantage of more smoothly conforming to the walls of the blood vessel (due to the gradual nature of their bends). It would have been obvious to curve the Ravenscroft et al. primary struts 26 so that it too would have this advantage. As to claim 9, for example, Ravenscroft et al. fail to disclose a retrieval hook. However, Walak et al. teach that a retrieval hook 64 should be included on the hub of a filter apparently in order to obtain the advantage facilitating easy retrieval of the filter. It would have been obvious to include a retrieval hook on the Ravenscroft et al. filter so that it too would have this advantage.

Applicant's arguments filed sep. 6, 2007 have been fully considered but they are not persuasive. Member 26 of Ravenscroft et al. is curved where it is bent since a bend in a wire inherently results in a curve. The claims do not require the curve to extend along the entire length of the member. Even if secondary struts 18 of Ravenscroft et al. are not directly connected to the primary struts 26 within hub 12, they are still connected (indirectly) to the primary struts 26 by hub 12 and the welds within the hub.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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mht



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731